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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

12-CR-171 (JPO)

6 MIKHAIL ZEMLYANSKY, MICHAEL  
7 DANILOVICH, TATYANA  
8 GABINSKAYA, JOSEPH VITOULIS,  
9 BILLY GERIS,

10 Defendants.

Jury Trial

11 -----x  
12 New York, N.Y.  
13 September 10, 2013  
14 10:04 a.m.

15 Before:

16 HON. J. PAUL OETKEN,

17 District Judge

18 APPEARANCES

19 PREET BHARARA

20 United States Attorney for the  
21 Southern District of New York

22 EDWARD Y.K. KIM

23 PETER M. SKINNER

24 DANIEL S. NOBLE

25 Assistant United States Attorneys  
COLLEEN GEIER, Paralegal Specialist

RONALD P. FISCHETTI, ESQ.

PHYLLIS ANN MALGIERI, ESQ.

Attorney for Defendant Mikhail Zemlyansky

LAW OFFICE OF ERIC FRANZ, PLLC

Attorneys for Defendant Mikhail Zemlyansky

BY: ANDREW MANCILLA, ESQ.

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1 APPEARANCES  
2 (Continued)3 CREIZMAN PLLC  
4 Attorneys for Defendant Michael Danilovich  
BY: ERIC M. CREIZMAN, ESQ.  
KAITLIN DABBERT5 GLENN A. GARBER, P.C.  
6 Attorneys for Defendant Billy Geris  
BY: GLENN A. GARBER, ESQ.  
G. HANNA ANTONSSON, ESQ.7 ARTHUR GERSHFELD, PLLC  
8 Attorneys for Defendant Tatyana Gabinskaya  
BY: ARTHUR GERSHFELD, ESQ.9 LAW OFFICE OF STANISLAO A. GERMAN  
10 Attorneys for Defendant Joseph Vitoulis  
BY: STANISLAO A. GERMAN, ESQ.11 MYERS SINGER & GALIARDO LLP  
12 Attorneys for Defendant Joseph Vitoulis  
BY: MATTHEW D. MYERS, ESQ.13 ALSO PRESENT: DONALD ANSPACHER, FBI  
14 MICHAEL KELLEY, FBI

D9alzem1

1 (In open court; case called)

2 THE CLERK: Starting with the government, can I have  
3 counsel state their appearance for the record. Also, if  
4 defense counsel could state for the record anyone who's present  
5 with them here in the courtroom. Starting with the government.

6 MR. KIM: Good morning. Edward Kim, Peter Skinner,  
7 Daniel Noble, and Colleen Geier from the US Attorney's Office,  
8 and Special Agents Donald Anspacher and Michael Kelley for the  
9 FBI.

10 THE COURT: Good morning.

11 MR. FISCHETTI: Good morning, your Honor. Ronald  
12 Fischetti representing Mikhail Zemlyansky, with Phyllis  
13 Malgieri behind me.

14 THE COURT: Good morning.

15 MR. CREIZMAN: Good morning, your Honor. Eric  
16 Creizman for Michael Danilovich, and with me is Kaitlin  
17 Dabbert, a graduate of NYU Law School.

18 THE COURT: Good morning.

19 MR. GERSHFELD: Good morning, your Honor. Arthur  
20 Gershfeld for Dr. Tatyana Gabinskaya.

21 THE COURT: Good morning.

22 MR. GERMAN: Good morning, your Honor. Appearing for  
23 Dr. Joseph Vitoulis, Stanislao German, and with me is  
24 co-counsel Matthew Myers.

25 MR. MYERS: Good morning.

D9alzem1

1                   THE COURT: Good morning.

2                   MR. GARBER: Good morning. Glenn Garber for Billy  
3 Geris, and also I have Hanna Antonsson, who's an associate  
4 working with me on this case.

5                   THE COURT: Good morning, everyone. We're here for  
6 jury selection in this trial. Let me just cover any  
7 preliminary matters regarding jury selection.

8                   I've received an update of witnesses to ask about from  
9 Mr. German, as well as a proposed voir dire question relating  
10 to the suspension of the license, and also from Mr. Garber an  
11 updated list, and I received the government's list yesterday.  
12 Are there any other issues?

13                  MR. GERMAN: Judge, just as a practical matter, we  
14 can't see you.

15                  THE COURT: Yeah, I know.

16                  MR. GERMAN: Kind of bizarre. We really can't see  
17 you.

18                  THE COURT: I have to figure out a way to move this.  
19 Anyway, I'll figure that out.

20                  MR. GERMAN: And also, we did a little test where I  
21 sat in the jury -- in the witness seat, and counsel can't see  
22 the witness when they're seated there. That's going to be an  
23 issue in a couple of days, but I don't know what we're going to  
24 do. Maybe we raise the seat higher? I don't know. But we  
25 can't see when the witness is going to be seated in the witness

D9alzem1

1 chair.

2 MR. MYERS: Judge, would you permit a lawyer to sit in  
3 the first row when it's that lawyer's witness to direct or  
4 cross?

5 THE COURT: Yeah, I think that works.

6 MR. GARBER: Or maybe for any. I mean, because the  
7 witnesses may be relevant to all of us even though they're not  
8 our witnesses. We need to see their faces and their  
9 expressions. I don't know if we could use that front row as  
10 necessary when the witnesses are testifying.

11 THE COURT: Sure. I think that's fine. So where  
12 you're standing now, you can't see the witness?

13 MR. GERMAN: The witness will be back to your left.

14 THE COURT: Oh, you're right.

15 MR. GARBER: I can't see anything.

16 MR. GERMAN: Mr. Garber can't see anything.

17 MR. GARBER: If I was 6 inches taller, maybe I'd have  
18 a shot, but, you know, I don't even know then.

19 Maybe we can think about it. For jury selection it's  
20 not, you know --

21 THE COURT: Right, right. Yeah, I mean, obviously,  
22 that wheel won't be there, but that only helps so much. It may  
23 be that we need to use the first row, you know, to observe the  
24 witness. This witness box is not in an ideal place. But it is  
25 where it is.

D9alzem1

1                   MR. FISCHETTI: Your Honor, if I can be of some  
2 assistance, long before they closed this courtroom, some 30  
3 years ago, I tried a case where Judge Motley was the judge, and  
4 she allowed us to sit in the first row so we could observe the  
5 gestures and how a witness looks when testifying. We thought  
6 that was something helpful to the court and defense counsel,  
7 and she allowed all defense counsel to move there, if they  
8 wanted to, with regard to a witness testifying. I'm not saying  
9 it's binding on the court, but that's what happened when I  
10 tried that case here.

11                  THE COURT: Sure. I'm okay with that, and I can  
12 explain to the jury that that's, you know, the reason for it.  
13 I think that's fine.

14                  MR. GERMAN: Judge, just one preliminary matter with  
15 regard to the voir dire. In your Honor's voir dire, I'm going  
16 to request on page 3, right before Section 1 about questions  
17 about the charges, the last sentence before that subsection is  
18 that each defendant is presumed innocent. I would request that  
19 your Honor also state some language that each defendant is to  
20 be judged individually in this case as well.

21                  THE COURT: Is that okay with the government?

22                  MR. KIM: No objection to that, your Honor. But just  
23 on the subject of Mr. German's proposed question to add to the  
24 voir dire, I don't know -- does the court have a revised voir  
25 dire?

D9alzem1

1 THE COURT: Yes.

2 MR. KIM: Okay. Because I think the government  
3 objects to Mr. German's proposal. We'll obviously wait to see  
4 what the court's formulation is.

5 THE COURT: Yeah, I was going to read that to you.  
6 Going back to Mr. German's point, I'll say, "And each defendant  
7 is presumed innocent and each defendant --" what was the  
8 language you wanted?

9 MR. GERMAN: Is to be adjudged individually and  
10 separately, something along those lines.

11 THE COURT: Is to be judged?

12 MR. SKINNER: Judge, maybe, "You are to consider the  
13 guilt or innocence of each defendant," either individually or  
14 separately.

15 THE COURT: Is that okay?

16 MR. GERMAN: That's fine. Thank you.

17 THE COURT: I'll say, "and you are to judge the guilt  
18 or innocence of each defendant separately." I'll say  
19 "individually."

20 MR. GARBER: Similar score?

21 THE COURT: Yes.

22 MR. GARBER: And this may be the preliminary remarks  
23 to the jury, after the jury is sworn, but I believe defense  
24 counsel are going to be conferring, maybe getting up and going  
25 over to each other and so forth, and if there could be some

D9alzem1

1 remarks made to the jury similar to this: Just because they're  
2 conferring, that does not erode the fact that they're all  
3 individual and they have to be judged individually, and just  
4 because there's some amount of camaraderie amongst us, I don't  
5 want that to mislead the jury.

6 THE COURT: Sure.

7 MR. GARBER: And the last thing, on the issue of us  
8 being able to see, the defendants also -- and this probably  
9 goes to the issue of confrontation -- they have the right to  
10 see their accusers, so they may also need to go over and sit in  
11 that front row too so they can see.

12 THE COURT: Yes.

13 On Mr. German's proposed instruction, here's the  
14 language that I'd like to use:

15 "You may hear evidence in this trial that one of the  
16 defendant doctors in this case previously had his medical  
17 license suspended in connection with an administrative hearing.  
18 The administrative hearing applied a different standard from  
19 the standards that apply in a criminal case, which I will  
20 explain in detail later. Is there anyone who would have  
21 difficulty separating that prior administrative suspension from  
22 the issue of guilt in this criminal case?"

23 MR. KIM: We have no objection to that, your Honor.

24 MR. GERMAN: No objection, your Honor.

25 THE COURT: Okay. Great. Any other voir dire-related

D9alzem1

1 issues?

2                 Okay. So just to confirm, so we're all on the same  
3 page, we're going to qualify 42 total before the exercise of  
4 peremptories. In terms of the main, the primary 12 jurors,  
5 there will be 8 peremptories to be exercised by the government,  
6 14 peremptories to be exercised by the defendants, and when you  
7 add those numbers to 12, you get 34, so we have 34 in the pool  
8 of primary jurors, potential jurors for the primary 12, and  
9 then as to alternates, there are going to be 4 alternates. The  
10 government has 2 peremptories as to the alternate group,  
11 defendants collectively have 2 peremptories as to the alternate  
12 groups, so 2 plus 2 plus 4 is 8. So there's 8 in the pool as  
13 to alternates, and I'm going to treat that as an independent  
14 group. Those 8 will be the last 8 of the 42 who are qualified  
15 as the pool of potential alternates.

16                 All right. So now I believe we're just waiting for  
17 the jury pool. Anything else?

18                 All right. We'll come back when we have the jury  
19 pool. Thanks, everyone.

20                 (Recess)

21                 (Jury selection conducted)